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Attorneys for Defendant
JOHN CRANE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EVERETT HOGGE and
PRISCILLA HOGGE,

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.,

Defendants.

No. C07 2873 EDL

**DECLARATION OF ROBERT L.
NELDER IN SUPPORT OF JOHN
CRANE INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR ORDER
SHORTENING TIME FOR BRIEFING
AND HEARING OF MOTION FOR
REMAND**

Date: July 10, 2007

Time: 9:00 a.m.

Dept.: E, 15th Floor

Judge: Hon. Elizabeth D. Laporte

Complaint Filed: June 2, 2006

Trial Date: May 7, 2007

I, Robert L. Nelder, state that:

1. I am an attorney licensed to practice before this court and a partner in the law firm of Hassard Bonnington LLP, and one of the attorneys for defendant John Crane Inc. in the above-captioned matter. Unless otherwise indicated, I make the following statements of my own personal knowledge and, if called upon to do so, could and would competently testify thereto.

2. This case was assigned for trial in state court on May 7, 2007, in

1 Department 611 of the San Francisco Superior Court, Hon. Diane E. Wick presiding.
2 At that time, a number of defendants, including John Crane Inc. ("John Crane"),
3 remained as defendants in the case.

4 3. From May 7, 2007 through May 16, 2007, a number of court-
5 supervised settlement conferences were held. The court minutes and the Register of
6 Actions reflect that as of May 16, 2007, all defendants except John Crane had settled.
7 Since there were only two sides remaining (plaintiffs and John Crane), Judge Wick
8 informed the parties that there would only be six peremptory challenges per side.
9 Jury hardships commenced on May 17, 2007.

10 4. Oral voir dire commenced on Monday, May 21, 2007, and a jury
11 (pre-qualified for service up to and including June 22, 2007) was impaneled that day.
12 By then, the only defendant remaining at trial was John Crane. No other defendant
13 participated in jury selection.

14 5. When opening statements were presented to the jury on May 23,
15 2007, plaintiffs, Everett Hogge and Priscilla Hogge, and John Crane were the only
16 parties remaining in the courtroom. Plaintiffs' opening statement suggested the jury
17 should hold defendant John Crane responsible for its share of Mr. Hogge's asbestos
18 exposure when they rendered their verdict, and did not mention any other defendant.
19 Id.

20 6. After it became amply clear that John Crane was the last
21 remaining defendant against whom plaintiffs intended to proceed at trial, John Crane
22 timely filed a Notice of Removal on June 1, 2007. A copy of that Notice of Removal is
23 attached hereto as Exhibit A.

24 7. Shortly after John Crane filed its Notice of Removal, plaintiffs
25 filed their Motion for Remand as well as a motion for an order shortening time for
26 service of John Crane's opposition papers and for the hearing of that motion.

27 8. On June 4, 2007, during discussions with the Court, plaintiffs'
28 counsel, Stephen Healy, mentioned that he had spoken with Mr. Hogge on June 1,

1 2007, and that at the time of that conversation, Mr. Hogge was in his real estate office
2 in Virginia.

3 I declare under penalty of perjury under the laws of the State of
4 California that the foregoing is true and correct.

5 Executed at San Francisco, California on June 6, 2007.

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7 /s/ Robert L. Nelder
8 Robert L. Nelder
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EXHIBIT A

HASSARD BONNINGTON LLP
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Attorneys for Defendant
JOHN CRANE INC.

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDL

EVERETT HOGGE and
PRISCILLA HOGGE,

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.,

Defendants.

C-07-2873
No.

(San Francisco County Superior Court
Case No. CGC-06-452846)

NOTICE OF REMOVAL
28 U.S.C. Section 1441(b)
(Diversity Jurisdiction)

TO THE CLERK AND THE HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:

Defendant John Crane Inc. (hereinafter "John Crane" or "Defendant")
hereby removes to the United States District Court for the Northern District of
California, the following state court action: Everett Hogge and Priscilla Hogge,
plaintiffs v. A. W. Chesterton Company, et al., defendants, which was filed as Case
No. CGC-06-452846 in the Superior Court of the State of California, County of San
Francisco.

Removal of this action is authorized under 28 U.S.C. section 1441(b),
diversity of citizenship, based on the following facts:

1. On or about June 2, 2006, plaintiffs Everett Hogge and Priscilla

1 Hogge ("plaintiffs") commenced an action against Defendant by filing their complaint
2 with the Superior Court of the State of California, County of San Francisco. True and
3 correct copies of the summons and the complaint ("Complaint"), together with Paul &
4 Hanley, LLP's Master Complaint – Asbestos, which was filed on September 7, 2000,
5 are attached to the accompanying declaration of B. Thomas French as Exhibit 1.

6 2. It is undisputed that plaintiffs Everett Hogge and Priscilla Hogge
7 are citizens of the State of Virginia. Plaintiff states in response to interrogatories
8 served in this case that they have lived in Glouster, Virginia from 1988 to the present.
9 (Please see Exhibit 2 attached to the accompanying declaration of Robert Hamblett,
10 responses to Interrogatory Nos. 1 and 5.)

11 3. At the time the complaint was filed, it could not be removed for
12 multiple reasons including that one or more California defendants were named and
13 sued in the Complaint.

14 4. One of the defendants named in the complaint is Hill Brothers
15 Chemical Company. Hill Brothers Chemical Company is a California corporation with
16 its principal place of business in California. Attached as Exhibit 3 to the
17 accompanying declaration of B. Thomas French is a true and correct copy of a
18 printout from the California Secretary of State's website (www.ss.ca.gov/corpdata)
19 identifying Hill Brothers Chemical Company as a California corporation with its
20 principal place of business at 1675 N. Main St., Orange, California.

21 5. As of May 11, 2007, six defendants remained in the Hogge
22 matter, one of which was Hill Brothers Chemical Company. Attached as Exhibit 4 to
23 the accompanying declaration of B. Thomas French is a true and correct copy of the
24 Court's May 14, 2007 Minute Order reflecting the parties as of May 11, 2007.

25 6. As of May 15, 2007, after additional settlements, only two
26 defendants remained: John Crane Inc. and Hopeman Brothers, Inc. Attached as
27 Exhibit 5 to the accompanying declaration of B. Thomas French is a true and correct
28 copy of the Court's May 15, 2007 Minute Order reflecting the parties as of that date.

1 Hill Brothers Chemical Company was, as of May 15, 2007, no longer a defendant in
2 the action.

3 7. Hopeman Brothers, Inc., is a Delaware corporation with its
4 principal place of business is in North Carolina. Attached as Exhibit 6 to the
5 accompanying declaration of B. Thomas French is a true and correct copy of a
6 printout from the Hopeman Brothers, Inc., as a Delaware corporation with its principal
7 place of business at 155 Sunnynoll Ct., Suite 300, Winston Salem, North Carolina.

8 8. Defendant John Crane Inc. is now the only remaining defendant
9 in this lawsuit. John Crane Inc. is a Delaware corporation with its principal place of
10 business in Illinois. Attached as Exhibit 7 to the accompanying declaration of B.
11 Thomas French is a true and correct copy of a printout from the California Secretary
12 of State's website (www.ss.ca.gov/corpdata) identifying John Crane Inc. as a
13 Delaware Corporation with its principal place of business in Morton Grove, Illinois.

14 9. Defendant timely files this notice of removal on or about June 1,
15 2007, less than 30 days after receiving written notice of removability. 28 U.S.C.
16 §1446(b).

17 10. The amount in controversy in this lawsuit exceeds \$75,000.
18 Plaintiffs have recently filed formal demands in State Court against defendant John
19 Crane for amounts well in excess of the jurisdictional requirement. Attached as
20 Exhibit 8 to the accompanying declaration of B. Thomas French is a true and correct
21 copy of Plaintiffs' C.C.P. §998 Offer to Compromise to Defendant John Crane Inc.,
22 which shows the amounts of plaintiffs' demands at page 3.

23 11. Attached as Exhibit 9 to the accompanying declaration of B.
24 Thomas French is a true and correct copy of an economic damages report created by
25 plaintiffs' expert, Dr. Barry Ben-Zion. Dr. Ben-Zion calculated plaintiffs' total
26 economic damages to be \$2,161,850.

27 12. Because this Court is the United States District Court for the
28 district and division embracing the place where the original State Court Complaint

1 was filed, it is the appropriate court for removal under 28 U.S.C. §1446(a).

2 13. Attached as Exhibit 10 to the accompanying declaration of B.
3 Thomas French is a copy of the Register of Actions in the state court proceeding. As
4 appears from Exhibit 10, the state court file is voluminous. To the extent that this
5 Court requires copies of records and proceedings in the state court proceeding,
6 Defendant respectfully requests this Court to issue a writ of certiorari to obtain these
7 voluminous documents from the San Francisco Superior Court pursuant to U.S.C.
8 §1447(b).

9 14. John Crane Inc. also intends to seek transfer of this action to the
10 Eastern District of Pennsylvania, where all Federal Court asbestos actions have been
11 centralized in a single forum, i.e., *In re Asbestos Products Liability Litigation* (Multi
12 District Litigation Docket No. 875), pursuant to 28 U.S.C. §1407. Accordingly,
13 Defendant is concurrently filing a Notice of Pendency of Other Action regarding
14 MDL 875.

15 WHEREFORE, defendant John Crane Inc. respectfully removes the
16 above-described state court action to this Court and requests that all further
17 proceedings in this action be conducted before this Court as provided by law.

18 Dated: June 1, 2007

19 HASSARD BONNINGTON LLP

20
21 By: B. Thomas French
22 B. Thomas French

23 Attorneys for Defendant
24 JOHN CRANE INC.
25
26
27
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PROOF OF SERVICE

CASE NAME: Hogge, et al. v. A.W. Chesterton Company, et al.

COURT: **United States District Court, Northern District**

CASE NUMBER: **C 07 2873 EDL**

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of eighteen years, and am not a party to the within action. I am employed in the City and County of San Francisco, California, and my business address is Two Embarcadero Center, Suite 1800, San Francisco, California 94111-3993. I am employed in the office of a member of the bar of this court at whose direction the service was made. On the date last written below, following ordinary business practice, I electronically served the following document(s):

**DECLARATION OF ROBERT L. NELDER IN SUPPORT OF JOHN CRANE INC.'S
OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER SHORTENING TIME FOR
BRIEFING AND HEARING OF MOTION FOR REMAND**

via the ECF system on the recipients designated below and on the Notice of Electronic Filing received via the ECF system:

Dean A. Hanley, Esq.
Philip A. Harley, Esq.
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Telephone: (510) 559-9980
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I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed on June 6, 2007, at San Francisco, California.

/s/ Michele Smith
Michele Smith